



FEDERAL TRADE COMMISSION

[File No. 192 3157]

LCA-Vision; Analysis of Proposed Consent Order to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement; request for comment.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices. The attached Analysis of Proposed Consent Order to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: Interested parties may file comments online or on paper by following the instructions in the Request for Comment part of the **SUPPLEMENTARY**

INFORMATION section below. Please write “LCA-Vision; File No. 192 3157” on your comment and file your comment online at <https://www.regulations.gov> by following the instructions on the web-based form. If you prefer to file your comment on paper, please mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC-5610 (Annex P), Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Paul Spelman (202-326-2487), Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule § 2.34, 16 CFR § 2.34, notice is hereby

given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of 30 days. The following Analysis to Aid Public Comment describes the terms of the consent agreement and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained at <https://www.ftc.gov/news-events/commission-actions>.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. Write “LCA-Vision; File No. 192 3157” on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the <https://www.regulations.gov> website.

Because of heightened security screening, postal mail addressed to the Commission will be subject to delay. We strongly encourage you to submit your comments online through the <https://www.regulations.gov> website.

If you prefer to file your comment on paper, write “LCA-Vision; File No. 192 3157” on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC-5610 (Annex P), Washington, DC 20580.

Because your comment will be placed on the publicly accessible website at <https://www.regulations.gov>, you are solely responsible for making sure your comment does not include any sensitive or confidential information. In particular, your comment should not include sensitive personal information, such as your or anyone else’s Social Security number; date of birth; driver’s license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure your

comment does not include sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any “trade secret or any commercial or financial information which . . . is privileged or confidential”—as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule § 4.10(a)(2), 16 CFR 4.10(a)(2)—including competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled “Confidential,” and must comply with FTC Rule § 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule § 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted on the <https://www.regulations.gov> website—as legally required by FTC Rule § 4.9(b)—we cannot redact or remove your comment from that website, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule § 4.9(c), and the General Counsel grants that request.

Visit the FTC Website at <http://www.ftc.gov> to read this document and the news release describing the proposed settlement. The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding, as appropriate. The Commission will consider all timely and responsive public comments it receives on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. For information on the Commission’s privacy policy, including routine uses permitted by the Privacy Act, see <https://www.ftc.gov/site-information/privacy-policy>.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission (“FTC” or “Commission”) has accepted, subject to final approval, an agreement containing a consent order with LCA-Vision (“LCA”). The proposed consent order (“proposed order”) has been placed on the public record for 30 days for receipt of comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the agreement, along with any comments received, and will decide whether it should withdraw from the agreement and take appropriate action or make final the proposed order.

This matter involves LCA’s advertising of the price of its LASIK surgery. The proposed complaint alleges that LCA’s advertisements represented that LASIK was available for “as low as” or “starting at” \$250 or \$295. This price was per eye, although that was not always clearly disclosed. In truth, very few consumers qualified for the advertised price. For example, anyone with vision worse than 20/40 was considered ineligible. Consumers typically learned the actual price only after undergoing a 90-minute to two-hour consultation and sales pitch. The complaint also alleges that LCA’s ads often failed to disclose adequately the prescriptions consumers needed to qualify for the price promotion, that few people were eligible, and that most people paid between \$1,800 and \$2,295 per eye. According to the proposed complaint, LCA’s advertisements were false or misleading in violation of Sections 5(a) and 12 of the FTC Act, and harmed consumers by, among other things, wasting their time by luring them into sitting for a lengthy consultation under false or deceptive pretenses.

The proposed order prohibits LCA from engaging in the alleged deceptive conduct in the future. Section I prohibits LCA from misrepresenting the price of LASIK or any material restrictions, limitations, or conditions that affect the price of LASIK. Section II requires LCA to make certain clear and conspicuous disclosures when advertising LASIK

for a price or discount for which a majority of consumers—either nationwide or in the geographic area where specific LCA ads are disseminated (e.g., the Cincinnati metropolitan area, the state of Ohio)—likely would not qualify.

Sections III and IV require LCA to pay to the Commission \$1,250,000 for consumer redress and describes the procedures and legal rights related to that payment. Section V requires LCA to provide customer information to enable the Commission to administer such redress. Sections VI through IX are reporting and compliance provisions, which include recordkeeping requirements and provisions requiring LCA to provide information or documents necessary for the Commission to monitor compliance with the proposed order. Section X states that the proposed order will remain in effect for 20 years, with certain exceptions.

The purpose of this analysis is to aid public comment on the proposed order. It is not intended to constitute an official interpretation of the complaint or proposed order, or to modify in any way the proposed order's terms.

By direction of the Commission, Commissioner Wilson dissenting.

April J. Tabor,

Secretary.

Dissenting Statement of Commissioner Christine S. Wilson

Today the Commission announces a complaint and proposed consent against LCA-Vision (also d/b/a LasikPlus and Joffe MediCenter). The complaint alleges that LCA-Vision engaged in deceptive representations, in violation of Section 5 of the FTC Act, in connection with promotional pricing claims for its LASIK surgery. Specifically, the complaint alleges that LCA-Vision advertised LASIK at a promotional price of \$250, \$250 per eye, or \$295 (Joffe MediCenter) but that the advertisements failed to disclose, or failed to disclose adequately, the requirements consumers must meet to be eligible for the

price promotions (Complaint Para. 8). The advertisements included disclaimers, but the complaint alleges that the disclaimers were not clear and conspicuous and did not provide sufficient information for consumers to understand the eligibility requirements. (*See, e.g.* Complaint Paras. 16-18).

The complaint further explains that LCA-Vision requires each potential patient to visit a center and undergo multiple eye exams during their consultation, including refraction, full pupil dilation, and a corneal topographical exam (Complaint Para. 25). After these examinations are complete, the potential patient learns whether they qualify for LASIK surgery and if they qualify for the promotional price. *Id.* The complaint asserts that the vast majority of consumers learn they do not qualify for the promotional price (Complaint Para. 27) and implies that LCA-Vision should have informed consumers in its advertising of the types of prescriptions that do not qualify, enabling ineligible consumers to avoid the wasted time and expense of traveling to a center and obtaining a consultation. (Complaint Para. 36).

Notably, though, the complaint explains that “[e]ligibility for vision correction surgery depends upon various factors, including a patient’s prescription level, the thickness of the cornea, the size of the pupil, and the stability of the prescription.” (Complaint Para. 7.) In addition, the complaint notes that “Respondent sets surgery price guidelines and parameters, including which prescriptions are eligible for certain pricing, but generally leave decisions as to a patient’s eligibility for LASIK surgery, and the appropriate type of surgery and laser, to the judgment of its surgeons and optometrists.” (Complaint Para. 7.) The company’s centers use two types of laser surgery and the complaint states that the decision of which type to use to correct a patient’s eyesight is left to the surgeon. (Complaint Paras. 6-7.)

It has been said that medicine is as much an art as a science.¹ Even as described in the complaint, eligibility for the surgery – and, as a secondary matter, pricing for those who are good LASIK candidates – present complicated and nuanced questions whose answers depend on the outcome of the eye examination and the judgement of the attending surgeon. There are no clear rules about who does and does not qualify for the two types of LASIK surgery offered at LCA-Vision centers. I believe there could be instances in which patients facially may appear to qualify for the price but, after thorough examination, are found not to qualify because of medical conditions or complications identified during consultation. I also believe there could be instances in which some patients who at first blush may appear to be ineligible in fact end up qualifying for the promotional pricing following consultation due to the discretion the attending surgeon enjoys.

Moreover, I believe the free eye exam provides significant value to the potential patient. Even consumers who do not qualify for promotional pricing learn detailed information about their vision, prescription, and eligibility for LASIK. As a result of this examination, LASIK candidates could learn that their prescriptions have changed, or that they show signs of glaucoma or other eye health issues that might require medical intervention. While the attractive prices advertised by LCA-Vision may have encouraged consumers to schedule consultations, I do not agree that this battery of comprehensive medical exams constitutes a waste of time. To the contrary, I believe that these free, comprehensive exams provide significant value to consumers, and that this value likely outweighs any potential injury that may have resulted from the allegedly deceptive advertising.

Thus, I am not convinced that the claims here constitute deceptive claims in violation of the FTC Act. LCA-Vision offered a price that is available to some consumers

¹ Joseph Herman, Medicine: the science and the art, 27 J. Med. Ethics: Medical Humanities 42 (2001) (discussing that “[m]edicine has been said to be both a science and an art” and describing scientific and artistic writings that demonstrate this point), available at: <https://mh.bmj.com/content/27/1/42>.

and did disclose that there were eligibility requirements. I agree that the disclosures noting eligibility requirements and the need for an examination to determine if one qualifies could have been presented more clearly in LCA-Vision's advertising. But I am concerned that requiring the inclusion of specific medical parameters in advertisements, when those parameters could be either over- or under-inclusive depending upon the results of the consultation, could be more confusing than helpful.

For these reasons, I dissent.

[FR Doc. 2023-02375 Filed: 2/3/2023 8:45 am; Publication Date: 2/6/2023]